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SENATE BILL 382

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO RECRUITMENT OF MEDICAL PROFESSIONAL PERSONNEL;
PROVIDING AUTHORITY TO THE BOARD OF TRUSTEES OF THE MINERS'
HOSPITAL OF NEW MEXICO TO MAKE DECISIONS REGARDING THE
REIMBURSEMENT OF ITS OFFICERS AND EMPLOYEES FOR TRAVEL AND
MOVING EXPENSES; EXEMPTING FROM THE PROCUREMENT CODE THE
PROCUREMENT OF PROFESSIONAL MEDICAL SERVICES BY THE MINERS'
HOSPITAL OF NEW MEXICO; RECONCILING MULTIPLE AMENDMENTS TO THE
SAME SECTION OF LAW IN LAWS 2007.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-8-3 NMSA 1978 (being Laws 1971,
Chapter 116, Section 2, as amended) is amended to read:

"10-8-3. DEFINITIONS.--As used in the Per Diem and
Mileage Act:

A. "secretary" means the secretary of finance and

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1 administration;

2 B. "employee" means [~~any~~] a person who is in the
3 employ of [~~any~~] a state agency, local public body, [~~or~~] public
4 post-secondary educational institution or the miners' hospital
5 and whose salary is paid either completely or in part from
6 public money, but does not include jurors or jury
7 commissioners;

8 C. "governing board" means the board of regents of
9 [~~any~~] an institution designated in Article 12, Section 11 of
10 the constitution of New Mexico or designated in Chapter 21,
11 Article 14 NMSA 1978, [~~or~~] the board of [~~any~~] an institution
12 designated in Chapter 21, Articles 13, 16 and 17 NMSA 1978 or
13 the board of trustees of the miners' hospital;

14 D. "local public body" means all political
15 subdivisions of the state and their agencies, instrumentalities
16 and institutions, except public post-secondary educational
17 institutions;

18 E. "miners' hospital" means the miners' hospital of
19 New Mexico as named in Article 14, Section 1 of the
20 constitution of New Mexico;

21 [~~E.~~] F. "state agency" means the state or [~~any of~~]
22 its branches, agencies, departments, boards, instrumentalities
23 or institutions, except public post-secondary educational
24 institutions and the miners' hospital;

25 [~~F.~~] G. "public post-secondary educational

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1 institution" means [~~any~~] an institution designated in Article
2 12, Section 11 of the constitution of New Mexico and [~~any~~] an
3 institution designated in Chapter 21, Articles 13, 14, 16 and
4 17 NMSA 1978; and

5 [~~G.~~] H. "public officer" or "public official" means
6 [~~every~~] an elected or appointed officer of the state, a local
7 public body, [~~or any~~] a public post-secondary educational
8 institution or the miners' hospital. "Public officer" includes
9 members of advisory boards appointed by [~~any~~] a state agency,
10 local public body, [~~or~~] public post-secondary educational
11 institution or the miners' hospital."

12 Section 2. Section 10-8-4 NMSA 1978 (being Laws 1963,
13 Chapter 31, Section 3, as amended) is amended to read:

14 "10-8-4. PER DIEM AND MILEAGE RATES--IN LIEU OF
15 PAYMENT.--

16 A. Notwithstanding any other specific law to the
17 contrary and except as provided in Subsection I of this
18 section, every nonsalaried public officer shall receive either
19 reimbursement pursuant to the provisions of Subsection K or L
20 of this section or up to ninety-five dollars (\$95.00) per diem
21 expenses:

22 (1) for each board or committee meeting
23 attended; or

24 (2) for each day spent in discharge of
25 official duties for travel within the state but away from [~~his~~]

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1 the officer's home.

2 Nonsalaried public officers who travel to attend a board
3 or committee meeting may elect to be reimbursed per diem under
4 either Paragraph (1) or (2) of this subsection.

5 B. Every salaried public officer or employee who is
6 traveling within the state but away from [~~his~~] the officer's or
7 employee's home and [~~away from his~~] designated post of duty on
8 official business shall receive either reimbursement pursuant
9 to the provisions of Subsection K or L of this section or:

10 (1) up to eighty-five dollars (\$85.00) per
11 diem expenses for each day spent in the discharge of [~~his~~]
12 official duties for a salaried public officer or employee of a
13 local public body or state agency. If the secretary finds that
14 a per diem allowance of eighty-five dollars (\$85.00) is
15 inadequate for reimbursement of expenses in any municipality of
16 this state, the secretary may authorize the reimbursement of
17 per diem for travel to the municipality not to exceed one
18 hundred thirty-five dollars (\$135); or

19 (2) up to eighty-five dollars (\$85.00) per
20 diem expenses for each day spent in the discharge of [~~his~~]
21 official duties for a salaried public officer or employee of a
22 public post-secondary educational institution or the miners'
23 hospital. If the governing board finds that a per diem
24 allowance of eighty-five dollars (\$85.00) is inadequate for
25 reimbursement of expenses in any municipality of this state,

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1 the governing board may authorize the reimbursement of per diem
2 for travel to the municipality not to exceed one hundred
3 thirty-five dollars (\$135).

4 C. Every public officer or employee shall receive
5 either reimbursement pursuant to the provisions of Subsection K
6 or L of this section or:

7 (1) for public officers or employees of a
8 state agency or local public body, up to one hundred fifteen
9 dollars (\$115) per diem expenses for each day of travel outside
10 the state on official business. If the secretary finds that a
11 per diem allowance of one hundred fifteen dollars (\$115) is
12 inadequate for out-of-state travel to a geographical area, the
13 secretary may authorize per diem not to exceed two hundred
14 fifteen dollars (\$215) for out-of-state travel to that
15 geographical area; provided that the secretary may authorize
16 per diem for travel to a locality inside or outside the
17 continental United States for a public officer or employee who
18 is reimbursed solely from federal funds in accordance with the
19 rate allowed by the federal government for travel to that
20 locality. In lieu of per diem, a person trained in the field
21 of accountancy and performing duties in that field of training
22 as an employee while assigned for periods exceeding three weeks
23 per assignment to travel out of state on official business may
24 receive either reimbursement pursuant to the provisions of
25 Subsection K of this section or actual expenses not to exceed

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1 two hundred fifteen dollars (\$215) per day. Expenses shall be
2 substantiated in accordance with rules promulgated by the
3 department of finance and administration. The secretary may
4 promulgate rules defining what constitutes out-of-state travel
5 for purposes of the Per Diem and Mileage Act; or

6 (2) for public officers or employees of a
7 public post-secondary educational institution or the miners'
8 hospital, up to one hundred fifteen dollars (\$115) per diem
9 expenses for each day of travel outside the state on official
10 business. If the governing board finds that a per diem
11 allowance of one hundred fifteen dollars (\$115) is inadequate
12 for out-of-state travel to a geographical area, the governing
13 board may authorize per diem not to exceed two hundred fifteen
14 dollars (\$215) for out-of-state travel to that geographical
15 area; provided that the governing board may authorize per diem
16 for travel to a locality inside or outside the continental
17 United States for a public officer or employee who is
18 reimbursed solely from federal funds in accordance with the
19 rate allowed by the federal government for travel to that
20 locality. Expenses shall be substantiated in accordance with
21 rules promulgated by the governing board. The governing board
22 may promulgate rules defining what constitutes out-of-state
23 travel for purposes of the Per Diem and Mileage Act.

24 D. Every public officer or employee shall receive
25 thirty-two cents (\$.32) a mile for each mile traveled in a

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1 privately owned vehicle or eighty-eight cents (\$.88) a mile for
2 each mile traveled in a privately owned airplane if the travel
3 is necessary to the discharge of ~~[his]~~ the officer's or
4 employee's official duties and if the private conveyance is not
5 a common carrier; provided, however, that only one person shall
6 receive mileage for each mile traveled in a single privately
7 owned vehicle or airplane, except in the case of common
8 carriers, in which case the person shall receive the cost of
9 the ticket in lieu of the mileage allowance.

10 E. The per diem and mileage or per diem and cost of
11 tickets for common carriers paid to salaried public officers or
12 employees is in lieu of actual expenses for transportation,
13 lodging and subsistence.

14 F. In addition to the in-state per diem set forth
15 in this section, the department of finance and administration,
16 by rule, may authorize a flat subsistence rate in the amount
17 set by the legislature in the general appropriation act for
18 commissioned officers of the New Mexico state police in
19 accordance with rules promulgated by the department of finance
20 and administration.

21 G. In lieu of the in-state per diem set in
22 Subsection B of this section, the department of finance and
23 administration may, by rule, authorize a flat monthly
24 subsistence rate for certain employees of the ~~[state highway~~
25 ~~and transportation]~~ department of transportation, provided that

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1 the payments made under this subsection shall not exceed the
2 maximum amount that would be paid under Subsection B of this
3 section.

4 H. Per diem received by nonsalaried public officers
5 for travel on official business or in the discharge of their
6 official duties, other than attending a board or committee
7 meeting, and per diem received by public officers and employees
8 for travel on official business shall be prorated in accordance
9 with rules of the department of finance and administration or
10 the governing board.

11 I. The provisions of Subsection A of this section
12 do not apply to payment of per diem expense to a nonsalaried
13 public official of a municipality for attendance at board or
14 committee meetings held within the boundaries of the
15 municipality.

16 J. In addition to any other penalties prescribed by
17 law for false swearing on an official voucher, it shall be
18 cause for removal or dismissal from office.

19 K. With prior written approval of the secretary or
20 the secretary's designee or the local public body, a
21 nonsalaried public officer [~~of a state agency or local public~~
22 ~~body, a~~], salaried public officer [~~of a state agency or local~~
23 ~~public body~~] or [a] salaried employee of a state agency or
24 local public body is entitled to per diem expenses under this
25 subsection and shall receive:

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1 (1) reimbursement for actual expenses for
2 lodging; and

3 (2) reimbursement for actual expenses for
4 meals not to exceed thirty dollars (\$30.00) per day for
5 in-state travel and forty-five dollars (\$45.00) per day for
6 out-of-state travel.

7 L. With prior written approval of the governing
8 board or its designee, a nonsalaried public officer [~~of a~~
9 ~~public post-secondary educational institution, a~~], salaried
10 public officer [~~of a public post-secondary educational~~
11 ~~institution~~] or [~~a~~] salaried employee of a public post-
12 secondary educational institution or the miners' hospital is
13 entitled to per diem expenses under this subsection and shall
14 receive:

15 (1) reimbursement for actual expenses for
16 lodging; and

17 (2) reimbursement for actual expenses for
18 meals not to exceed thirty dollars (\$30.00) per day for
19 in-state travel and forty-five dollars (\$45.00) per day for
20 out-of-state travel."

21 Section 3. Section 10-8-5 NMSA 1978 (being Laws 1978,
22 Chapter 184, Section 4, as amended) is amended to read:

23 "10-8-5. RESTRICTIONS--REGULATIONS.--

24 A. The secretary may promulgate rules and
25 regulations for state agencies and local public bodies for the

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1 purpose of carrying out the provisions of the Per Diem and
2 Mileage Act. Public officials [~~of public post-secondary~~
3 ~~educational institutions~~] and employees of public
4 post-secondary educational institutions or the miners' hospital
5 shall be subject to the rules [~~and regulations~~] of their
6 governing boards.

7 B. Public funds may be advanced to any public
8 officer or employee before the travel occurs only with prior
9 written approval of the secretary, the secretary's designee,
10 the local public body or the governing board or its designee.
11 This restriction shall not prohibit the use of authorized
12 credit cards in connection with purchases necessary to the use
13 of vehicles owned by the state, a local public body, [~~or~~] a
14 public post-secondary educational institution or the miners'
15 hospital or for food, lodging or transportation as permitted by
16 the department of finance and administration or the governing
17 board. Public funds shall be paid out under the Per Diem and
18 Mileage Act only upon vouchers duly presented with any required
19 receipts attached thereto. For employees authorized to receive
20 public funds in advance of travel, payment shall be received
21 only upon vouchers submitted with attached authorization for
22 each travel period. For public officers or employees using
23 authorized credit cards, vouchers with required receipts for
24 each month's travel expenses shall be submitted as a condition
25 to receiving authorization to use the credit card for the next

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1 month's travel. Travel expenses may also be advanced if the
2 travel is to be performed under provisions of federal or
3 private contracts and the funds used are not derived from taxes
4 or revenues paid to the state or any of its political
5 subdivisions.

6 C. Money expended by the governor from the
7 appropriations made for [~~his~~] the governor's office and
8 contingent and other expenses are not subject to any of the
9 foregoing provisions of this section and are not subject to
10 audit; provided that the governor shall only use contingent and
11 other expenses for purposes connected with obligations of the
12 office. An expenditure report on the use of the governor's
13 contingent and other expenses shall be submitted annually to
14 the department of finance and administration.

15 D. The secretary may reduce the rates set for the
16 per diem and mileage for any class of public officials and for
17 employees of state agencies, except public officials and
18 employees of public post-secondary educational institutions or
19 the miners' hospital, at any time [~~he~~] the secretary deems it
20 to be in the public interest, and such reduction shall not be
21 construed to permit payment of any other compensation,
22 perquisite or allowance. The secretary shall exercise this
23 power of reduction in a reasonable manner and shall attempt to
24 achieve a standard rate for all public officers and employees
25 of the same classification. The secretary may, at the request

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1 of any state agency and for good cause shown, reduce the rates
2 of per diem and mileage for that state agency. The governing
3 body of any local public body may eliminate or may reduce the
4 rates set for the per diem and mileage for all or any class of
5 public officials and employees of the local public body at any
6 time the local public body deems it to be in the public
7 interest, and such reduction shall not be construed to permit
8 payment of any other compensation, perquisite or allowance.
9 The local public body shall exercise this power of reduction in
10 a reasonable manner and shall attempt to achieve a standard
11 rate for all public officers and employees of the same
12 classification. The secretary may, in extraordinary
13 circumstances and with the prior approval of the state board of
14 finance in public meeting, allow actual expenses rather than
15 the per diem rates set in the Per Diem and Mileage Act.

16 E. The governing board or its designee may reduce
17 the rates set for the per diem and mileage for public officials
18 [~~of public post-secondary educational institutions~~] and [~~for~~]
19 employees of public post-secondary educational institutions or
20 the miners' hospital at any time the governing board deems it
21 to be in the public interest, and such reduction shall not be
22 construed to permit payment of any other compensation,
23 perquisite or allowance. The governing board shall exercise
24 this power of reduction in a reasonable manner and shall
25 attempt to achieve a standard rate for public officers and

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1 employees of public post-secondary educational institutions or
2 the miners' hospital. The governing board may reduce the rates
3 of per diem and mileage for [~~its~~] a public post-secondary
4 educational institution or the miners' hospital and may, in
5 extraordinary circumstances and in public meeting, allow actual
6 expenses rather than the per diem rates set in the Per Diem and
7 Mileage Act.

8 F. No reimbursement for out-of-state travel shall
9 be paid to any elected public officer, including any member of
10 the legislature, if after the last day to do so that officer
11 has not filed a declaration of candidacy for reelection to
12 [~~his~~] the public officer's currently held office or has been
13 defeated for reelection to [~~his~~] the public officer's currently
14 held office in a primary election or any general election.

15 G. Subsection F of this section does not apply to
16 any elected public officer who is ineligible to [~~succeed~~
17 ~~himself~~] serve another term after serving [~~his~~] the public
18 officer's term in office.

19 H. Subsection F of this section does not apply to
20 legislators whose travel has been approved by a three-fourths'
21 vote of the New Mexico legislative council at a regularly
22 called meeting.

23 I. Any person who is not an employee, appointee or
24 elected official of a county or municipality and who is
25 reimbursed under the provisions of the Per Diem and Mileage Act

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1 in an amount that singly or in the aggregate exceeds one
2 thousand five hundred dollars (\$1,500) in any one year shall
3 not be entitled to further reimbursement under the provisions
4 of that act until the person furnishes in writing to [~~his~~] the
5 person's department head or, in the case of a department head
6 or board or commission member, to the governor or, in the case
7 of a member of the legislature, to the New Mexico legislative
8 council an itemized statement on each separate instance of
9 travel covered within the reimbursement, the place to which
10 traveled and the executive, judicial or legislative purpose
11 served by the travel."

12 Section 4. Section 10-8-8 NMSA 1978 (being Laws 1979,
13 Chapter 273, Section 5, as amended) is amended to read:

14 "10-8-8. OTHER REIMBURSEMENTS.--

15 A. The secretary may authorize by regulation
16 reimbursement for the following actual expenses incurred by
17 public officers and employees of state agencies:

18 (1) moving expenses; provided that moving
19 expenses shall include the expenses of moving to New Mexico
20 from out of state incurred by a person recruited to become an
21 employee in New Mexico;

22 (2) professional fees or dues;

23 (3) tuition and fees for attending educational
24 programs or classes approved by the secretary; and

25 (4) registration fees for attending seminars,

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1 educational programs or classes.

2 B. The governing body of any local public body may,
3 by resolution, authorize the reimbursement of public officers
4 and employees for any of the actual expenses set forth in
5 Subsection A of this section. No resolution adopted pursuant
6 to this subsection shall authorize the reimbursement for any
7 expense not authorized by regulation of the secretary pursuant
8 to Subsection A of this section.

9 C. The governing board may, by [~~regulation~~] rule,
10 authorize the reimbursement of public officers [~~of public post-~~
11 ~~secondary educational institutions~~] and employees of public
12 post-secondary educational institutions or the miners' hospital
13 for any of the actual expenses set forth in Subsection A of
14 this section.

15 D. No reimbursement shall be made for any expenses
16 unless receipts for all such expenses are attached to the
17 reimbursement voucher."

18 Section 5. Section 13-1-98 NMSA 1978 (being Laws 1984,
19 Chapter 65, Section 71, as amended by Laws 2007, Chapter 55,
20 Section 1 and by Laws 2007, Chapter 345, Section 1) is amended
21 to read:

22 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
23 provisions of the Procurement Code shall not apply to:

24 A. procurement of items of tangible personal
25 property or services by a state agency or a local public body

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1 from a state agency, a local public body or external
2 procurement unit except as otherwise provided in Sections
3 13-1-135 through 13-1-137 NMSA 1978;

4 B. procurement of tangible personal property or
5 services for the governor's mansion and grounds;

6 C. printing and duplicating contracts involving
7 materials that are required to be filed in connection with
8 proceedings before administrative agencies or state or federal
9 courts;

10 D. purchases of publicly provided or publicly
11 regulated gas, electricity, water, sewer and refuse collection
12 services;

13 E. purchases of books and periodicals from the
14 publishers or copyright holders thereof;

15 F. travel or shipping by common carrier or by
16 private conveyance or to meals and lodging;

17 G. purchase of livestock at auction rings or to the
18 procurement of animals to be used for research and
19 experimentation or exhibit;

20 H. contracts with businesses for public school
21 transportation services;

22 I. procurement of tangible personal property or
23 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
24 by the corrections industries division of the corrections
25 department pursuant to rules adopted by the corrections

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1 industries commission, which shall be reviewed by the
2 purchasing division of the general services department prior to
3 adoption;

4 J. minor purchases not exceeding five thousand
5 dollars (\$5,000) consisting of magazine subscriptions,
6 conference registration fees and other similar purchases where
7 prepayments are required;

8 K. municipalities having adopted home rule charters
9 and having enacted their own purchasing ordinances;

10 L. the issuance, sale and delivery of public
11 securities pursuant to the applicable authorizing statute, with
12 the exception of bond attorneys and general financial
13 consultants;

14 M. contracts entered into by a local public body
15 with a private independent contractor for the operation, or
16 provision and operation, of a jail pursuant to Sections
17 33-3-26 and 33-3-27 NMSA 1978;

18 N. contracts for maintenance of grounds and
19 facilities at highway rest stops and other employment
20 opportunities, excluding those intended for the direct care and
21 support of persons with handicaps, entered into by state
22 agencies with private, nonprofit, independent contractors who
23 provide services to persons with handicaps;

24 O. contracts and expenditures for services or items
25 of tangible personal property to be paid or compensated by

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1 money or other property transferred to New Mexico law
2 enforcement agencies by the United States department of justice
3 drug enforcement administration;

4 P. contracts for retirement and other benefits
5 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

6 Q. contracts with professional entertainers;

7 R. contracts and expenditures for litigation
8 expenses in connection with proceedings before administrative
9 agencies or state or federal courts, including experts,
10 mediators, court reporters, process servers and witness fees,
11 but not including attorney contracts;

12 S. contracts for service relating to the design,
13 engineering, financing, construction and acquisition of public
14 improvements undertaken in improvement districts pursuant to
15 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
16 improvement districts pursuant to Subsection L of Section
17 4-55A-12.1 NMSA 1978;

18 T. works of art for museums or for display in
19 public buildings or places;

20 U. contracts entered into by a local public body
21 with a person, firm, organization, corporation or association
22 or a state educational institution named in Article 12, Section
23 11 of the constitution of New Mexico for the operation and
24 maintenance of a hospital pursuant to Chapter 3, Article 44
25 NMSA 1978, lease or operation of a county hospital pursuant to

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1 the Hospital Funding Act or operation and maintenance of a
2 hospital pursuant to the Special Hospital District Act;

3 V. purchases of advertising in all media, including
4 radio, television, print and electronic;

5 W. purchases of promotional goods intended for
6 resale by the tourism department;

7 X. procurement of printing services for materials
8 produced and intended for resale by the cultural affairs
9 department;

10 Y. procurement by or through the public education
11 department from the federal department of education relating to
12 parent training and information centers designed to increase
13 parent participation, projects and initiatives designed to
14 improve outcomes for students with disabilities and other
15 projects and initiatives relating to the administration of
16 improvement strategy programs pursuant to the federal
17 Individuals with Disabilities Education Act; provided that the
18 exemption applies only to procurement of services not to exceed
19 two hundred thousand dollars (\$200,000);

20 Z. procurement of services from community
21 rehabilitation programs or qualified individuals pursuant to
22 the State Use Act;

23 AA. purchases of products or services for eligible
24 persons with disabilities pursuant to the federal
25 Rehabilitation Act of 1973;

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1 BB. procurement of an agreement, pursuant to
2 Section 9-7-6.5 NMSA 1978, to operate Fort Bayard medical
3 center or to provide and operate in Grant county a replacement
4 facility for Fort Bayard medical center;

5 CC. contracts for investment advisory services,
6 investment management services or other investment-related
7 services entered into by the educational retirement board, the
8 state investment officer or the retirement board created
9 pursuant to the Public Employees Retirement Act; [~~and~~

10 ~~CC.]~~ DD. the purchase for resale by the state fair
11 commission of feed and other items necessary for the upkeep of
12 livestock; and

13 EE. procurement of professional medical services by
14 the board of trustees of the miners' hospital of New Mexico."

15 Section 6. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2008.